

(d) (2) - AT&T proposes the following addition:

After the defendant has been determined to be liable in such bifurcated proceeding, the Commission may order the defendant to deposit into an interest bearing escrow account or post a bond in a sum equal to the damages . . .

#### **Section 1.724 - Answers**

(a) - (c) and (i) - No proposed modifications; AT&T supports the proposed changes

(g) In cases brought pursuant to Section 271(d)(6)(B), the answer shall include a copy of, or a description by category and location of all documents, data compilations and tangible things in the defendant's possession, custody or control that are relevant to the disputed facts alleged with particularity in the pleadings. The answer may also include an explanation of why any relevant documents are believed to be privileged or confidential.

(h) The answer shall also list the name, business address and telephone number of each individual likely to have discoverable information relevant to the disputed facts alleged with particularity in the pleadings, identifying the subjects of information; provided that defendant need not provide telephone numbers of any individual represented by counsel.

#### **Section 1.725 - Cross-complaints and Counterclaims**

~~(a) Compulsory counterclaims, those arising out of the transaction or occurrence that is the subject matter of the complaint and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, must be filed concurrently with the answer or it will be barred. [Delete entire section]~~

~~(b) — (a) Permissive Counterclaims, those claims not arising out of the transaction or occurrence that is the subject matter of the complaint, must be filed concurrently with the answer in order to be resolved in the same proceeding. [optional: All counterclaims must arise out of the transaction or occurrence that is the subject matter of the complaint.] If not filed concurrently with the answer, however, the defendant will not be barred from filing any such claim in a separate proceeding, provided the statute of limitations has not yet run.~~

| ~~(e)~~ (b) Cross-complaints . . .

### **Section 1.726 - Replies**

(a) - (b) No proposed modifications

| (c) In cases brought pursuant to Section 271(d)(6)(B),  
 | Replies shall be accompanied by a copy of, or a description  
 | by category and location all documents, data compilations  
 | and tangible things in the complainant's possession, custody  
 | or control that are relevant to the disputed facts alleged  
 | with particularity in the pleadings. The reply may also  
 | include an explanation of why any relevant documents cannot  
 | be produced in the timeframe required or why any documents  
 | are believed to be privileged or confidential. Replies  
 | shall also include the name, address and telephone number of  
 | each individual likely to have discoverable information  
 | relevant to the disputed facts alleged with particularity in  
 | the pleadings, identifying the subjects of information;  
 | provided that the reply need not provide telephone numbers  
 | of any individual represented by counsel.

### **Section 1.727 - Motions**

(b) - (e) No proposed modifications

| (g) All procedural motions must be supported by a statement  
 | that the opposing party has been given at least two days  
 | notice of the moving party's intention to seek an order and  
 | must describe the parties' efforts to resolve the matter.  
 | In addition, Aall motions must contain proposed findings of  
 | fact and conclusions of law, with supporting legal analysis.  
 | . . .

### **Section 1.729 - Interrogatories**

AT&T proposes the following modifications to current Section 1.729:

| ~~(a) During the time period beginning with service of~~  
 | ~~the complaint and ending 30 days after the date an answer is~~  
 | ~~due to be filed, If permitted by the Commission staff at~~  
 | ~~the initial status conference or upon a subsequent motion,~~  
 | any party may serve any other party with written  
 | interrogatories, to be answered in writing by the party  
 | served or, if the party served is a public or private  
 | corporation or partnership or association, by any officer or  
 | agent who shall furnish such information as is available to  
 | the party. The number and scope of interrogatories shall be  
 | determined by the Commission staff. Unless otherwise

directed, A all interrogatories served on an opposing party shall be filed with the Commission at the time of service. ~~Parties shall propound no more than 30 single interrogatories without prior Commission approval. Subparts of an interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. This procedure may be used for the discovery of any~~ Interrogatories may seek only the discovery of nonprivileged matter which is relevant to the specific allegations in the pleadings. ~~Interrogatories may not be employed for the purpose of delay, harassment or to obtain information which is beyond the scope of permissible inquiry relating to the subject matter of the pleadings.~~

(b) Parties on whom interrogatories are served shall respond with answers or objections by the date ordered by the Commission staff. ~~without waiting to be ordered to do so by the Commission.~~ Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them. ~~The party on whom the interrogatories were served shall serve a copy of the answers and objections, if any, within 30 days after service of the interrogatories, except that a defendant may serve answers or objections within 15 days after filing its answer to the complaint, whichever period is longer. On proper motion being made, the Commission may allow a shorter or longer time for the filing of answers or objections.~~

(c) Where the responding party has failed to respond, or has objected, to any interrogatory, the party propounding the interrogatories may, within the time directed by the Commission staff, 15 days of the date the response was due if no response is filed or the date of service of the objection, move to compel a response thereto. The motion should state with specificity the relevance of and necessity for the requested information and must also comply with the requirements of §1.727 of this part pertaining to motions generally. Alternately, the party may request that answers to interrogatories be discussed during a status conference. ~~pursuant to §1.733.~~

(d) Answers to interrogatories shall not be filed with the Commission unless the parties are directed not to do so ordered by the Commission or its staff.

~~(e) The Commission may in its discretion limit the scope of permissible inquiry so that matters pertaining solely to the amount or computation of damages are not~~

~~addressed until after a finding of liability has been made against the complainant. Inquiries that relate dually to liability and damages will be permitted during initial discovery conducted during the liability phase. If a bifurcated framework is implemented and a finding of liability is made, the parties shall, within 5 working days, inform the Commission whether they wish to defer damages discovery in order to enter negotiations for the purpose of settling their dispute. If the parties commence settlement negotiations, damages discovery shall not be undertaken prior to 20 days after release of the liability order.~~  
 [Delete entire section]

### **Section 1.730 - Other Forms of Discovery**

AT&T proposes the following modifications to current Section 1.730:

(a) If a party believes it needs to engage in some form of discovery other than by written interrogatories under §1.729, including but not limited to the production of documents, or the taking of depositions, or the propounding of additional interrogatories, the party may file a motion with request the Commission staff requesting that to permit such discovery. be permitted. Except in extraordinary circumstances, such requests should be made at the initial status conference. If a request is made by subsequent motion, T the motion should state with specificity the type of discovery requested, the information which is expected to be elicited, the relevance of such information to the resolution of the proceeding, and must also comply with the requirements of §1.727 hereof, pertaining to motions generally. Such motions shall state whether a request for such discovery has been discussed with the other party and the other party's basis for declining to comply with the request. Such motions will not be routinely granted except for good cause shown.

(b) The party from whom the discovery is sought may file an opposition to a motion seeking discovery within ten five days after the motion is filed. No reply is permitted.

(c) - (d) - No proposed modifications

### **Section 1.731 -Confidentiality of Information Produced or Exchanged by the Parties**

No proposed modifications

### Section 1.732 - Other Required Written Submissions

(b) Unless otherwise permitted by the Commission staff, in cases when discovery is not conducted, briefs shall be filed concurrently by both complainant and defendant within 90 85 days from the date a complaint is served, except for cases brought pursuant to Section 276(d)(6)(B), in which briefs must be submitted within 45 days from the date the complaint is served.

(c) No proposed modifications

(d) Reply briefs may be submitted by either party within 20 days from the date initial briefs are due, except for cases brought pursuant to Section 276(d)(6)(B), in which reply briefs must be submitted within 10 days from the date initial briefs are due. Unless otherwise permitted by the Commission staff, Reply briefs shall be no longer than 10 pages in cases where there is no discovery and 20 pages in cases where discovery has been conducted.

(h) ~~Within 5 days after the answer is filed~~ Not later than two days before the initial status conference, the parties shall submit a joint statement of stipulated facts and key legal issues.

### Section 1.733 - Status Conference

(a) . . . Unless otherwise ordered by the Commission staff, an initial status conference shall take place ~~within ten days~~ on the tenth calendar day after the answer is filed, unless otherwise directed by the staff such day is a holiday, in which case the conference will be held on the next business day. . . .

(a)(1)-(4) and (6)-(7) - No proposed modifications

(a)(5) Whether discovery is necessary, and, if so, the scope, type and schedule for any discovery, including, but not limited to the use of written interrogatories, depositions and production of documents, data compilations and other tangible things.

(b) No proposed modifications

(c) . . . If no stenographic record is made, within 24 hours two business days after a status conference, the parties in attendance, unless otherwise directed, must make all reasonable efforts to submit a joint proposed order memorializing the oral rulings made during the conference to

the Commission. . . . Unless otherwise agreed or directed,  
the cost of such stenographer will be shared equally by the  
parties.

(d)-(e) - AT&T supports retention of current sections (d)  
 and (e).

**Section 1.734 - Specifications as to Pleadings, Briefs, and**  
**Other Documents; Subscription**

No proposed modifications

**Section 1.735 - Copies; Service; Separate Filings Against**  
**Multiple Defendants**

(b) No proposed modifications

(d) The complainant, acting as the agent of the Commission  
for this limited purpose, shall serve the complaint on the  
 defendant's registered agent for the service of  
 process. . . .

(e) AT&T proposes the following addition at the end of the  
 text of the proposed rule:

Service by facsimile shall not be considered hand delivery  
unless it arrives at the recipient's office by 4:30 p.m.  
local time for the recipient on the same day.

**Section 1.1105 -Schedule of Charges for Applications and**  
**Other Filings in the Common Carrier Services**

No proposed modifications